*** THE HON'BLE SRI JUSTICE J.CHELAMESWAR**

AND

***THE HONOURABLE SRI JUSTICE RAMESH RANGANATHAN**

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+ WRIT PETITION No. 21395 of 2005

% 24.03.2006

Narinder Kumar

… Petitioner

and

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$ The Union of India rep. By its

Secretary to Government, Ministry of Railways,

New Delhi and 4 others

RESPONDENTS

! Counsel for the Petitioner: Sri Nooty Ramamohana Rao

^ Counsel for the Respondent : Sri R.S.Murthy, S.C. for respondent

< Gist:

> Head Note:

? CITATIONS:

(1998)7 SCC 84

2 AIR 1964 SC 364

3 1969 (1) LLJ 300 (Cal HC)

4 (1997) 3 SCC 72

5 2005 SCC (L&S) 1006

6 (1999)7 SCC 739

7 AIR 1991 SC 1507

8 AIR 1994 SC 1074

[9] AIR 1996 SC 1669

THE HON'BLE SRI JUSTICE J.CHELAMESWAR

AND

THE HON'BLE SRI JUSTICE RAMESH RANGANANTHAN

WRIT PETITION No.21395 OF 2005

JUDGMENT: (per Hon'ble Sri Justice Ramesh Ranganathan)

In this writ petition, the order of the Central Administrative Tribunal, in O.A.72 of 2005 dated 15.2.2005, and the proceedings of the Railway Board dated 24.9.2002, as confirmed by the 1st respondent in his proceedings dated 17.3.2004, are sought to be quashed.

2. Facts, in brief, are that the petitioner, a post graduate in Engineering (Structures) from Punjab University, consequent upon his selection by the Union Public Service Commission (UPSC) at the Combined Engineering Services Examination, came to be appointed to the Indian Railway Service of Engineers in 1988 and was promoted to the Junior Administrative Cadre in the month of January, 1999. He was confirmed in the said cadre during April 2004 along with the 1992 batch of IRSE officers. He was superseded by his 1988 batchmates and his juniors from the 1989, 1990 and 1991 batches, in view of the impugned order of punishment. While working as a Divisional Engineer, (gauge conversion), Hubli, Karnataka State, in the year 1995, a stretch of 90 kilometers of existing meter gauge, between Hubli – Londa railway

stations, was taken up for conversion into broad gauge. Railway traffic had to be stopped in the section and since the broad gauge conversion was sought to be achieved in record time, efforts were made by the railway administration, to achieve the said object, by attending to the works simultaneously from both ends. The petitioner, as a Divisional Engineer, is said to have regularly camped at the site attending to various duties being performed almost round the clock. The entire work is said to have been broken into 19 reaches and important works entrusted to qualified and competent engineering contractors, whose work and performance was monitored and supervised and guided by a team of railway officials including the petitioner. Petitioner would submit that gauge conversion work was completed in a record time of 30 days and this achievement was appreciated in all quarters. On suspicion that the local railway administration had paid various contractors monies, in excess of their entitlement, the Vigilance branch of the South Central Railway asked the petitioner on 14.6.1996 to explain four items. The petitioner is said to have drawn up a detailed note in reply thereto on 6.7.1996. Not being satisfied, a memorandum of charge was drawn by the General Manager, South Central Railway, vide proceedings dated 25.6.1996. The charges levelled against the petitioner are as under:

"ARTICLE-I:

Shri Narinder Kumar, Dy.CE/C/Hubli, while working as Divisional Engineer/Gauge Conversion/Hubli, had committed grave misconduct, in that he certified bills for payment for item NS/11 in bills-CC/III for Reach IX, CC/II for Reach XIII, CC/II for Reach XIV, CC/II for XVI and CC/1 for Reach XIX of track linking contracts for Hubli-Londa section, without actual execution of work. Shri Narinder Kumar, therefore, failed to maintain absolute integrity and devotion to duty and thus, violated Rule 3(1)(i) and (ii) of Railway Service (Conduct)Rules, 1966.

ARTICLE-II:

Shri Narinder Kumar, Dy.CE/C/Hubli, while working as Divisional Engineer/Gauge Conversion/Hubli, had committed grave misconduct, in that he certified bills for payment – CC-III for Reach IX, CC/II for Reach XIII, CC/II for Reach XIV, CC/II for Reach XVI and CC/I for Reach XIX of track linking contracts for Hubli-Londa Section without conducting mandatory test check as stipulated in GM/W/SC's letter No.W.55/I/1/vol.IX, dated 18.6.1991. Shri Narinder Kumar, therefore, failed to carry out administrative instructions regarding mandatory test check and thus, violated rule 26 of Railway Service (Conduct) Rules, 1966."

3. The imputations of charge were detailed in Annexure-II to the charge memo. Four documents were listed in Annexure-III as the basis and supporting evidence for

sustaining the charges. No witnesses were cited to establish the charges leveled against him. The petitioner submitted a detailed reply denying the charges. The General Manager appointed Sri C.N. Sastry, a former Chief Mechanical Engineer of the South Central Railway, as the enquiry officer. The petitioner participated in the enquiry proceedings which were held on various dates and places including at Hubli. While the prosecution did not examine any witnesses, the petitioner examined 11 witnesses in his defence, all of whom belonged to the Civil Engineering Department of the South Central Railway and had attended works connected with broad gauge conversion carried out between Hubli – Londa sections. The petitioner filed several documents. Several records were summoned and marked on behalf of the defence. The enquiry officer finalized his report and recorded a finding that the petitioner was not guilty of the allegations levelled against him. The enquiry officer held that the executing team, attending the broad gauge conversion work, at Hubli-Londa, had thoroughly complied with the safety standards and norms prescribed in various railway manuals and circulars and that the executing team was not guilty of misdemeanour.

4. A detailed rebuttal, of the Articles of charge, is given by the petitioner in his affidavit, which for reasons infra, need not be gone into. Suffice to note that since the General Manager, South Central Railway, Secunderabad, intended to disagree with the findings of the enquiry officer, and to conclude that both articles of charge, levelled against the petitioner, had been proved, the petitioner was called upon, vide memorandum dated 08.03.2000, to show cause thereto. The petitioner submitted an exhaustive and detailed reply vide letter dated 29.6.2000. He also solicited a personal hearing in the matter. The General Manager, South Central Railway, vide Memorandum dated 16.10.2000, accorded personal hearing to the petitioner at 15.00 hours on 20.10.2000. The petitioner availed the opportunity and submitted details of the entire case before Sri N.Kirtivasan, the then General Manager, South Central Railway. According to the petitioner, the General Manager heard him for 15 minutes, perused various documents marked by the petitioner as exhibits before the enquiry officer, and as he was completely satisfied with the enquiry officer's report, he decided that it deserved complete acceptance and did not require any departure to be made therefrom. Petitioner would submit that though the General Manager had recorded his decision exonerating the petitioner of the charges, formal orders dropping disciplinary proceedings were not communicated and the matter was kept pending, despite several reminders vide letters dated 30.7.2001, 12.8.2001 and

30.8.2001. The petitioner took up the issue with the Member, Engineering and Ex-officio Secretary to the Government, Ministry of Railways on 1.10.2001 and 11.3.2002, but to no avail. Petitioner would refer to the case of one Sri K. Suryanarayana, Divisional Engineer who, along with the petitioner, was one of the members involved in the Hubli-Londa gauge conversion work, and contend that the entire set of allegations made against him were also repeated against Sri K. Suryanarayana, the charges were identical, the enquiry officer was the same and even the findings of the enquiry officer in the case of Sri K. Suryanarayana were similar to that of the petitioner. On the Ministry of Railways seeking its opinion, the UPSC, after exhaustive examination, advised the President on 28.6.2000, that the findings recorded by the enquiry officer, in the enquiry held against Sri K.Suryanarayana, were cogent and relevant, that no exception could be drawn thereto and that the officer did not deserve any punishment to be visited on him. Petitioner would contend that he has been discriminated against, and while the advise of the UPSC was accepted and disciplinary proceedings against Sri K.Suryanarayana were dropped on 11.7.2001, he was imposed a major penalty.

5. The petitioner filed O.A.No.1019 of 2002, to have all the charges against him quashed, for the reason of inordinate delay in finalizing the disciplinary proceedings. It was only thereafter, that the impugned order was passed on 24.10.2002. The Joint Secretary (Establishment) of the Railway Board, vide proceedings dated 24.10.2002, imposed on the petitioner, the major penalty of reduction in the time scale of pay by two stages for a period of one year with cumulative effect. Petitioner would contend that a reading of the order dated 24.10.2002 would unmistakably disclose as if a single individual had considered the matter and had passed the order, and as the Railway Board is a multi member body, if the Railway Board had really considered the matter and had passed orders, the expression in the singular form would not have been used. Petitioner would submit that if, instead of the Railway Board, a single member had decided the issue, the entire proceedings would stand vitiated, and that the Joint Secretary, Railway Board was not the competent disciplinary authority to impose any punishment, since the petitioner held the same rank and status of a Joint Secretary to the Railway Board. Against the said order dated 24.10.2002, the petitioner preferred an appeal to the President on 14.11.2002. The petitioner again approached the Central Administrative Tribunal, in O.A. 1307 of 2002, which was disposed of on 25.11.2003 directing the appellate

authority to dispose of the appeal dated 14.11.2002 and pass appropriate orders within three months. The UPSC tendered its opinion on 5.3.2004, based on which the petitioner's appeal was rejected and the order communicated on 17.3.2004. Aggrieved by the order of the Railway Board dated 24.9.2002, as confirmed in the proceedings of the 1st respondent dated 17.3.2004, the petitioner filed O.A.72 of 2005. The Tribunal, in its order dated 15.02.2005, held that the scope of interference in such matters was very limited, that it was not entitled to re-appreciate evidence or substitute its views for the view taken by the disciplinary authority and that its interference would only be on account of malafides, for want of compliance with principles of natural justice or in a case where there was no evidence at all or total absence of evidence. The Tribunal held that there was material on record to sustain the findings of the disciplinary authority as also the appellate authority and, in that view, it did not find any merit in the case. The O.A. was summarily rejected without costs. Hence, this writ petition.

6. In the counter affidavit filed, on behalf of respondents 1 and 3 to 5, by the Deputy Chief Personnel Officer (G), South Central Railway, it is stated that for the purpose of gauge conversion work on Hubli-Londa Section, tender notification was issued, that the work was entrusted to contractors during the year 1995, and that the petitioner, as a Divisional Engineer (Gauge Conversion), Hubli, was in charge of track linking contracts in connection with gauge conversion works in the Hubli-Londa Section. Respondents would contend that it came to their notice about the certification and release of payments to the contractors without any work being executed or measured, though the petitioner was obligated to check and justify payment. Charges were framed, vide charge memo dated 15.6.1998, in terms of Rule 8(2) read with Rule 2C(ii) and Schedule III (1) of the Railway Servants (Discipline and Appeal) Rules 1968. On the petitioner denying the charges, enquiry was ordered and after an elaborate enquiry, the enquiry officer submitted his report on 4.8.1999. It is stated that the then General Manager, as disciplinary authority, after going through the enquiry report, felt that the findings in the enquiry report were not consistent with the evidence on record and that certification for payments to the contractors was issued without works being executed and mandatory checks, as required under the administrative instructions, being carried out. The General Manager is said to have issued the memorandum of disagreement enclosing a copy of the enquiry report. It is

stated that the petitioner's representation thereto on 29.6.2000 was duly considered by the General Manager and an opportunity of personal hearing, as sought by the petitioner, was granted and at that stage the matter was forwarded to the Railway Board, which is competent to impose any of the penalties under sub-clause (i) to (vi) of Rule 6, in terms of Item 1 of Schedule III of the Railway Servants (Discipline and Appeal) Rules, 1968, since the General Manager, as the disciplinary authority, was empowered to impose only minor penalties under Clauses (i), (iii), (iii-a) (iii-b) and (iv) of Rule 6. It is stated that the Railway Board, after going through the entire records including the disagreement memo of the General Manager and the representations made thereto by the petitioner, imposed on him the penalty of reduction in the time scale of pay by two stages for a period of one year with cumulative effect and this order was communicated, vide proceedings dated 24.9.2002, by the Joint Secretary, who is competent to communicate orders of the Railway Board in terms of Rule 26-A of the Railway Servants (Discipline & Appeal) Rules, 1968. It is stated that, after careful consideration of the entire matter, the petitioner's appeal was rejected, that the same was communicated to the petitioner, vide proceedings dated 17.3.2004, by the Joint Secretary, competent to communicate the orders of the President in terms of Rule 26-A of the Rules.

7. Sri R.S. Murthy, Learned standing counsel, placed before this Court the original records of both the Railway Board and General Manager, the contents of which, to the extent necessary, are briefly referred to. The General Manager, vide proceedings dated 5.11.1999 had taken a tentative view to impose a major penalty on the petitioner and the matter was referred to the Central Vigilance Commission. Agreeing with the tentative view of the disciplinary authority the Commission, vide office memorandum dated 2.2.2000, advised imposition of suitable major penalty on the petitioner. Subsequent thereto, vide memorandum dated 8.3.2000, the General Manager, South Central Railway, indicated the reasons for his disagreement with the findings of the enquiry officer and in holding that both the charges leveled against him were duly proved. While enclosing a copy of the enquiry officer's report, the General Manager, vide memo dated 08.03.2000, indicated his reasons for disagreement with the findings of the enquiry officer. The petitioner was informed, vide proceedings 13.3.2000, that the disciplinary authority would take a suitable decision after considering his representation, if any, on the report/disagreement memo and if he wished to make any representation, he may do so in writing, to the disciplinary authority, within 15 days. After the petitioner was given a personal

hearing, the General Manager considered the representation dated 29.6.2000 and having heard him in person on 20.10.2000, indicated on file that none of the charges were proved. Agreeing with the findings of the enquiry officer, and disagreeing with the views of the earlier General Manager on the enquiry officer's report, the General Manager absolved the petitioner of the charges. Since the Central Vigilance Commission had advised that suitable major penalty be imposed on the petitioner and since the decision of the General Manager deviated from the Central Vigilance Commission's second stage advise, the matter was referred to the Central Vigilance Commission to obtain information for further processing the case. This decision of the General Manager, absolving the petitioner of the charges, was however not communicated to the petitioner. The Railway Board, vide letter 97/V3/SC/11 dated 12.9.2001, advised that a major punishment be imposed as per the Central Vigilance Commission's second stage advise and as the disciplinary authority, for imposition of a major penalty, was the Board, the South Central railway was asked to refer the case to the Secretary (Estt)/Railway Board, under intimation to the Vigilance Directorate. The Vigilance Directorate of the Railway Board informed the General Manager, South Central Railway, that the petitioner's representation, against the memorandum of disagreement with the General Manager's provisional views in the above case, were examined and the Board had decided that the Central Vigilance Commission's second stage advise to impose a major penalty on the petitioner was acceptable. As the disciplinary authority to impose a major penalty was the Railway Board, the South Central Railways was asked to refer the case to the Railway Board as per procedure. Vide letter dated 3.10.2001, the entire file and other documents were forwarded to the Railway Board. The Railway Board, vide letter dated 7.1.2002, informed the General Manager, South Central Railway, that while referring the case to the Board, the General Manager had not made any specific recommendations, in the case of the petitioner, but had only stated that he had already expressed his views and that the Board's instructions may be carried out. Since the General Manager had not made any specific recommendations, the matter was considered in consultation with the Legal Adviser of the Railway Board and the General Manager was asked to reconsider his provisional views in the matter once again as the General Manager's earlier recommendations in the case were at variance with the Central Vigilance Commission's second stage advice. Vide letter dated 7.2.2002, the Railway Board was informed, that as per its advise, the petitioner's case was put up to the General Manager for reconsideration and that

the General Manager, after considering the case, had indicated that a minor penalty would serve the purpose. The General Manager, in his note dated 4.3.2002, felt that there was no major lapse in execution of the two items mentioned and at best a minor penalty would serve the purpose for not recording the mandatory test checks in the measurement book and that the Board may be advised accordingly. Since the decision of the General Manager was after the Vigilance Commission's second stage advice to impose a major penalty, the matter was referred to the Railway Board (Vigilance) for obtaining Central Vigilance Commission's clearance. The Railway Board, vide proceedings dated 17.6.2002, advised that the petitioner's entire file be forwarded to the Railway Board to process the case. Accordingly the case papers were forwarded to the Railway Board, vide letter dated 10.7.2002. Thereafter, the Railway Board, vide order dated 24.9.2002, imposed on the petitioner the major penalty of reduction in the time scale of pay by two stages for a period of one year with cumulative effect.

8. Sri Nuty Ramamohana Rao, learned counsel for the petitioner, would contend that the entire proceedings, including the order of imposition of punishment by the disciplinary authority, as confirmed by the appellate authority, was vitiated for violation of the rules of natural justice, while the objections were heard by the General Manager, South Central Railway, the order of punishment was passed by the Railway Board, which did not give the petitioner an opportunity of oral hearing. Learned counsel would submit that irrelevant and extraneous material, such as statements made by certain officers to the Vigilance Officer, was relied upon, though these documents did not form part of the material on record in the departmental enquiry. Learned counsel would submit that since the General Manager is the authority competent to impose minor penalties, the memorandum of disagreement issued by the General Manager was only with regards imposition of minor penalty and since a major penalty had been imposed on the petitioner, the Railway Board had necessarily to record its independent disagreement with the findings recorded by the enquiry officer and should have given the petitioner an opportunity to show cause as to why it should not disagree with the findings. Learned counsel would rely o n **Punjab National Bank Vs. Kunj Behari Misra**. He would submit that the inordinate delay in finalizing disciplinary proceedings had visited the petitioner with civil consequences as he was denied his promotion and his batch mates and juniors had superseded him. Learned counsel would contend that the 2nd respondent did

not follow uniform standards and while it differed with the findings of the enquiry officer in the petitioner's case, in the case of Sri K.Suryanarayana it concurred with the findings of the enquiry officer, though the charges levelled both against the petitioner and Sri K.Suryanarayana were identical and in both the cases, the enquiry officer had absolved them of the charges. Learned counsel would submit that since the Railway Board, a multi member body, could alone have passed the order imposing on the petitioner a major penalty and since the impugned order, contains several passages in the singular, it is either an order passed by the Joint Secretary, who is not competent to do so and in case it was passed by the Railway Board, the use of expressions in the singular would reveal non-application of mind. Learned counsel would submit that while it is open to the General Manager to record his opinion that the charges levelled against the petitioner necessitated major penalty being imposed and thereafter to transmit the records to the Railway Board, it was not open to the Railway Board to *suo motu* summon the records and impose a major penalty on the petitioner. Learned counsel would submit that even if it is held that the Railway Board, as the disciplinary authority, had imposed the punishment, it could only have done so after putting the petitioner on notice and recording its independent reasons as to why it chose to differ with the findings of the enquiry officer. Learned counsel would submit that the findings of the Railway Board are based on no evidence, are perverse, and cannot form the basis to hold the petitioner guilty of the charges and to impose on him a major penalty.

9. Sri R.S.Murthy, learned standing counsel for the Railways, would seek to sustain the orders of the disciplinary authority. He would submit that the charges held proved against the petitioner were grave and serious necessitating imposition of a major penalty. Learned standing counsel would submit that since the disciplinary authority, for imposing a major penalty on officers, to which cadre the petitioner belonged, was the Railway Board, it was open for it to call for the records from the General Manager for imposition of a major penalty. Learned standing counsel would submit that since the General Manager had recorded his reasons for disagreeing with the findings of the enquiry officer and the petitioner was given an opportunity to show cause as to why the General Manager should not do so, and since the very same reasons weighed with the Railway Board in imposing the major penalty, it was not necessary for the Railway Board to provide an opportunity afresh to the

petitioner or to record separate reasons for its disagreement. Learned Standing counsel would contend that since the rules do not provide for a personal hearing, the petitioner was not entitled, as a matter of right, to claim that he should have been given an opportunity of personal hearing by the Railway Board. Learned counsel would submit that no prejudice has been caused to the petitioner on account of the Railway Board summoning the records from the General Manager and imposing a major penalty on him, more so, as the rules do not require a show cause notice to be issued with regards the proposed punishment. Learned Standing Counsel would place reliance on **Union of India v. H.C.Goel; Bibhuti Bhusan Paul v. State of West Bengal; Indian Oil Corporation Ltd v. Ashok Kumar Arora;** and **National Fertilizers Ltd v. P.K.Khanna**.

10. Before we examine the rival contentions, it is necessary that the rules, governing disciplinary proceedings against railway servants, be taken note of.

11. In exercise of the powers conferred by the proviso to Article 309 of the Constitution of India, the Railway Servants (Discipline and Appeal) Rules, 1968 (hereinafter referred to as 'the Rules), were made. Rule 2(1)(a) defines 'appointing authority' in relation to a railway servant to mean:

"(i) the authority empowered to make appointments to the Service of which the railway servant is, for the time being, a member or to the grade of the Service in which the railway servant, is, for the time being, included, or

(ii) the authority empowered to make appointments to the post which the Railway servant, for the time being holds, or

(iii) the authority which appointed the Railway servant to such Service, grade or post, as the case may be or

(iv) where the Railway servant having been a permanent member of any other Service or having substantively held any other permanent post, has been in continuous employment under the Ministry of Railway, the authority which appointed him to that Service or to any grade in that service or to that post;

whichever authority is the highest authority"

12. Part III of the Rules relate to penalties and disciplinary authorities and Rule 6 thereunder details the penalties and reads as under:

"**6. Penalties** –The following penalties may, for good and sufficient reasons and as hereinafter provided, be imposed on a Railway servant, namely:-

Minor Penalties:-

i. Censure

ii. Withholding of his promotion for a specified period;

iii. Recovery from his pay of the whole or part of any pecuniary loss caused by him to the Government or Railway Administration by negligence or breach of orders;

(iii-a) Withholding of the Privilege Passes or Privilege Ticket Orders or both;

(iii-b) Reduction to a lower stage in the time scale of pay by one stage for a period not exceeding three years, without cumulative effect and not adversely affecting his pension;

iv. Withholding of increments of pay for a specified period with further directions as to whether on the expiry of such period this will or will not have the effect of postponing the future increments of his pay.

Major Penalties:

v. Save as provided for in clause (iii-b) reduction to a lower stage in time scale of pay for a specified period, with further directions as to whether on the expiry of such period, the reduction will or will not have the effect of postponing the future increments of his pay;

vi. Reduction to a lower time scale of pay, grade, post, or service, with or without further directions regarding conditions of restoration to the grade or post or service from which the Railway servant was reduced and his seniority and pay on such restoration to that grade, post or service;

vii. Compulsory retirement;

viii. Removal from service which shall not be a disqualification for future employment under the Government or Railway Administration;

ix. Dismissal from service which shall ordinarily be a disqualification for future employment under the Government or Railway administration;

Provided that in cases of persons found guilty of any act or omission which resulted or would have, ordinarily, resulted in collisions of Railway trains, one of the penalties specified in clauses (viii) to (ix) shall, ordinarily, be imposed and in cases of passing railway signals at danger, one of the penalties specified in clauses v to ix shall ordinarily be imposed where such penalty is not imposed, the reasons therefor shall be recorded in writing.

Provided further that in cases of persons found guilty of possessing assets disproportionate to known sources of income or found guilty of having accepted or having obtained from any person any gratification, other than legal remuneration, as a motive or reward for doing or forbearing to do any official act, one of the penalties specified in clauses (viii) or (ix) shall ordinarily be imposed and where such penalty is not imposed, the reasons therefor shall be recorded in writing."

13. Rule 7 relates to disciplinary authorities and rule 8 to the authority competent

to institute proceedings. Rules 7 and 8 read as under:

"**7. Disciplinary authorities**:-

1. The President may impose any of the penalties specified in rule 6 on any Railway servant

2. Without prejudice to the provisions of sub-rule(1), any of the penalties specified in rule 6 may be imposed on a Railway servant by authorities specified in Schedules I, II and III.

3. The disciplinary authority in the case of Railway servant officiating in a higher post, shall be determined with reference to the officiating post held by him at the time of taking action.

8. Authority to institute proceedings:-

(1)The President or any other authority empowered by him, by general or special order, may-

a. institute disciplinary proceedings against any Railway servant;

b. direct a disciplinary authority to institute disciplinary proceedings against any Railway servant on whom that disciplinary authority is competent to impose, under these rules, any of the penalties specified in rule 6.

(2) A disciplinary authority competent under these rules to impose any of the penalties specified in clauses (i) to (iv) of rule 6 may, subject to the provisions of clause (c) of sub-rule (1) of rule 2, institute disciplinary proceedings against any Railway servant for the imposition of any of the penalties specified in clauses (v) to (ix) of rule 6, notwithstanding that such disciplinary authority is not competent, under these rules, to impose any of the latter penalties."

14. Part IV prescribes the procedure for imposing penalties. Rule 9 prescribes the procedure for imposing major penalties. Rule 10 prescribes the action to be taken on the enquiry report and reads as under:

"**10. Action on the inquiry report**:-

1. If the disciplinary authority:-

   a. after considering the inquiry report, is of the opinion that further examination of any of the witnesses is necessary in the interests of justice, it may recall the said witness and examine, cross-examine and re-examine the witness;

   b. is not itself the inquiring authority may, for reasons to be recorded by it in writing, remit the case to the inquiring authority for further inquiry and report and the inquiring authority shall thereupon proceed to hold further inquiry according to the provisions of rule 9, as far as may be.

2. The disciplinary authority:-

a. shall forward or cause to be forwarded a copy of the report of the inquiry, if any, held by the disciplinary authority or where the disciplinary authority is not the inquiring authority a copy of the report of the inquiring authority, its findings on further examination of witnesses, if any, held under sub-rule (1)(a) together with its own tentative reasons for disagreement, if any, with findings of the inquiring authority on any article of charge to the Railway Servant, who shall be required to submit if he so desires, his written representation or submission to the disciplinary authority within fifteen days, irrespective of whether the report is favourable or not to the Railway Servant;

(b) shall consider the representation, if any submitted by the Railway Servant and record its findings before proceedings further in the matter as specified in sub-rules (3), (4) and (5).

(3) Where the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the records of the inquiry to the appropriate disciplinary authority who shall act in the manner as provided in these rules.

4. If the disciplinary authority having regard to its findings on all or any of the articles of charge, is of the opinion that any of the penalties specified in clauses (i) to (iv) of rule 6 should be imposed on the railway servant, it shall, notwithstanding anything contained in rule 11, make an order imposing such penalty;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making any order imposing any penalty on the Railway Servant.

(5) If the disciplinary authority, having regard to its findings on all or any of the articles of charge and on the basis of the evidence adduced during the inquiry, is of the opinion that any of the penalties specified in clauses (v) to (ix) of the rule 6 should be imposed on the railway servant, it shall make an order imposing such penalty and it shall not be necessary to give the railway servant any opportunity of making representation on the penalty proposed to be imposed;

Provided that in every case where it is necessary to consult the Commission, the record of the inquiry shall be forwarded by the disciplinary authority to the Commission for its advice and such advice shall be taken into consideration before making an order imposing any such penalty on the railway servant"

15. Rule 12 relates to communication of orders and provides that the orders made by the disciplinary authority, containing its findings on each article of charge, shall be communicated to the Railway Servant, who shall also be supplied with a copy of the advice, if any, given by the Commission and, where the disciplinary authority has not accepted the advice of the Commission, a brief statement of the reasons for such

non-acceptance. Rule 18 provides that an order imposing any of the penalties specified in Rule 6 shall be subject to appeal. Rule 19 details the appellate authorities. Rule 25 provides for revision and under sub-rule(1) thereof, the Railway Board, may at any time, either on its own motion or otherwise, call for the records of any enquiry and revise any order made under the rules after consultation with the Commission and may confirm, modify or set aside the order or confirm, reduce, enhance or set aside the penalty imposed , or impose any penalty where no penalty has been imposed, provided that no order imposing or enhancing penalty shall be made by any revising authority unless the railway servant concerned has been given a reasonable opportunity of making a representation against the proposed penalty. Rule 26 relates to service of orders and thereunder, every order, made or issued under the Rules shall be served in person on the railway servant. Rule 26-A relates to service of orders on behalf of the railway board and, thereunder, the Secretary, Railway Board/Joint Secretary/Deputy Secretary shall be competent to sign on behalf of the Railway Board on any order made or issued under the rules.

16. As noted above, Rule 7(2) provides that any of the penalties specified under Rule 6 may be imposed on a railway servant by the authorities specified in Schedule I, II and III. Schedule III of the Rules provides that in the case of a railway servant Group A, the President or the Railway Board is empowered to impose any of the penalties specified in clauses (i) to (v) of rule 6. The General Manager is empowered to impose the penalties specified in Clauses (i), (iii) (iii-a), (iii-b) and (iv) of Rule 6, in the case of officers upto and including selection grade officers of Junior Administrative Grade. Since the penalties, under clauses (i) to (iv) of Rule 6, are classified as minor penalties and clauses (v) to (ix) of Rule 6 are classified as major penalties, the General Manager is empowered under the rules to impose any of the minor penalties except withholding of promotion for a specified period under Clause (ii) of Rule 6, whereas the Railway Board has been empowered to impose any of the minor penalties and the major penalty of reduction to a lower stage in the time scale of pay for a specified period with a further direction as to whether, on expiry of such period, the reduction would or would not have the effect of postponing the future increments of pay. In so far as the other major penalties, in clauses (vi) to (ix) of Rule 6, are concerned, it is only the President who has the authority to impose the punishments. Under Rule 10(2)(a), the disciplinary authority shall cause to be forwarded a copy of the report of the enquiring authority, its findings thereon together with the disciplinary authority’s own tentative reasons for disagreement, if any, with

the findings of the enquiring authority on any article of charge, to the railway servant who shall be required to submit, if he so desires, his written representation thereon. Under Rule 10(2)(b), the disciplinary authority shall consider the representation and record its findings before proceeding further in the matter under sub-rules (iii), (iv) and (v). Under Rule 10(3), if the disciplinary authority is of the opinion that the penalty warranted is such as is not within its competence, he shall forward the record of the enquiry to the appropriate disciplinary authority, who shall act in the manner provided in the rules. Rule 10(3) requires the disciplinary authority to form an opinion that the penalty warranted is such as is not within his competence. Having formed the opinion, the disciplinary authority is required to forward the records of the enquiry, to the appropriate disciplinary authority who has competence to impose such a penalty.

17. In the case on hand while the General Manager, (disciplinary authority to impose a minor penalty), had caused a copy of the enquiry report and his tentative reasons for disagreement to be forwarded to the petitioner calling upon him to submit his representation thereto, the record does not disclose formation of the requisite opinion by the General Manager, under Rule 10(3), that the penalty warranted was such as was not within his competence. Formation of such an opinion is a pre-requisite for the records of the enquiry to be forwarded to the Railway Board, the proper disciplinary authority for imposing a major penalty under clause (v) of Rule 6. It is necessary to note that the General Manager, the disciplinary to impose minor penalty, did not forward the records of the enquiry to the Railway Board, and on the other hand it is the Railway Board which, on being informed that the General Manager was of the view that a minor penalty would suffice, had called for the records and had imposed on the petitioner the major penalty under Rule 6(v). The conditions prescribed in Rule 10(3) have thus not been complied with.

18. The question which then falls for examination is as to whether the Railway Board could, under Rule 10(2)(a), have imposed on the petitioner the major penalty, prescribed under Rule 6(v). It is no doubt true that the Railway Board is also the disciplinary authority to impose any of the penalties specified under clauses (i) to (v) of Rule 6 and was therefore independently entitled to impose any of these penalties. If the power exercised by the Railway Board is held to be under sub-rule (2) and not sub-rule (3) of Rule 10, then, the Railway Board should have, while forwarding a copy of the enquiry report to the petitioner, also forwarded its own tentative reasons

for disagreement with the findings of the enquiry officer. Admittedly, in the case on hand, the Railway Board has not communicated, its tentative reasons of disagreement along with the findings of the enquiry officer, to the petitioner nor was the petitioner given an opportunity to submit his representation thereto. The Railway Board, after calling for the records from the General Manager, went ahead and, without any further reference to the petitioner, imposed on him the major penalty under Rule 6(v). The rules do not provide for a situation wherein the Railway Board, in a case other than the one referred to it under sub-rule (3) of Rule 10, could treat the tentative reasons of disagreement of the General Manager, with the findings of the enquiry officer, as its own tentative reasons of disagreement, the reply submitted by the petitioner earlier as his representation thereto and to impose a major punishment on him. Rule 10(2) would apply only when the Railway Board, on receipt of a copy of the enquiry report, decides to impose a punishment on its own accord, in which event, it would have to comply with the requirements of sub-rule (2). If the reasons for disagreement of the General Manager are to be taken as the basis for imposing a major penalty, the Railway Board would have been empowered to do so only under sub-rule (3) of Rule 10 whereunder jurisdiction is conferred on the Railway Board only when the General Manager forms the requisite opinion that the penalty warranted is not within his competence and having formed such an opinion forwards the records of the enquiry to the Railway Board. In the case on hand, neither has the General Manager formed an opinion that the penalty warranted is a major penalty, which is not within his competence, nor did he, on his own accord, forward the records of the enquiry to the Railway Board.

19. The records disclose a curious turn in events. While initially the then General Manager was of the view that a major penalty should be imposed and had sought the advice of the Central Vigilance Commission, after the Central Vigilance Commission had concurred with the views of the then General Manager, the General Manager recorded his tentative reasons for disagreement with the findings of the enquiry officer, vide Memo dated 08.03.2000, while forwarding a copy of the enquiry report to the petitioner. After receipt of the petitioner's representation in this regard, and after giving him an oral hearing, the General Manager initially intended to absolve the petitioner of all the charges and after protracted correspondence with the Vigilance Department and the Railway Board, the General Manager changed his mind and decided that a minor penalty should be imposed. Thus, after he had indicated his tentative reasons for disagreement with the findings of the enquiry

officer, the General Manager intended initially to absolve the petitioner of the charges and later to impose a minor penalty. He did not form the opinion that a major penalty should be imposed. Since the General Manager, as the disciplinary authority, after complying with Rule 10(2), had not formed the requisite opinion, that the penalty warranted was not within his competence, nor did he on his own accord forward the records of the enquiry to the Railway Board, the Railway Board did not have jurisdiction under Rule 10(3) to take further action to impose a major penalty on the petitioner. If the Railway Board were to take action on its own, under Rule 10(2), it ought to have communicated its own tentative reasons for disagreement with the findings of the enquiry officer. The action of the Railway Board is therefore in contravention of Rule 10 of the Rules.

20. It is not doubt true that the Railway Board, under Rule 25(1), has the power to revise an order passed by the General Manager and impose or enhance the penalty. Proviso (a) thereunder, however, requires that before any order of punishment is imposed or enhanced, the Railway Servant concerned must be given a reasonable opportunity of making a representation against the proposed penalty. Firstly, notings on file do not constitute an order which can be subjected to revision. It is only if the General Manager had passed an order which was communicated to the petitioner, could such an order be revised under Rule 25(1). Even otherwise the power of revision, under Rule 25(1) for imposition of a major penalty under Rule 6(v), could only have been exercised by the Railway Board after informing the petitioner of the penalty proposed and giving him an opportunity of submitting his representation thereto. Such procedure has not been complied with in the present case. The penalty imposed on the petitioner, vide proceedings dated 24.9.2002, cannot therefore be said to be an order passed under Rule 25(1).

21. As held in **Kunj Behari Misra**[1] and **Yoginath D. Bagde v. State of Maharashtra** where anything in favour of a delinquent officer is proposed to be overturned by the disciplinary authority, the delinquent officer must be given an opportunity of being heard for, otherwise, he would be condemned unheard in the disciplinary proceedings. In the present case, the disciplinary authority to impose a major penalty under Rule 6 (v) is the Railway Board and since it sought to overturn the findings of the enquiry officer in holding the petitioner not guilty of the charges,

and to impose a major penalty, the Railway Board, as the disciplinary authority, must have given the petitioner an opportunity of being heard in this regard. This requirement, when read in the context of Rule 10(2) and (3) of the Rules, would clearly require the Railway Board to communicate its reasons for disagreement and permit the petitioner to submit his representation thereto. In the absence of formation of opinion by the General Manager that a major penalty is required to be imposed and more so as, in the present case, the General Manager has not forwarded the records of enquiry to the Railway Board, and it was the Railway Board which had summoned the records of enquiry from the General Manager, the tentative reasons recorded by the General Manager, for differing with the findings of the enquiry officer, cannot be said to be the tentative reasons of the Railway Board enabling it to impose a major penalty.

22. Now the judgments relied on by Sri R.S. Murthy, learned Standing Counsel for the Railways.

23. In **Bibhuti Bhusan Paul**[3] the Calcutta High Court held thus:-

"…….It is suggested on behalf of the petitioner that the Director of Agriculture, instead of applying his mind to the report submitted by the enquiring officer in order to ascertain what punishment if any is to be awarded to the petitioner, merely adopted the opinion expressed by the Joint Director. I cannot accept the suggestion. The punishing authority, in the instant case the Director of Agriculture is to decide on the report of the enquiring officer what action is to be taken against the delinquent. How the punishing authority arrives at the decision is no concern of the delinquent. Even if the punishing authority makes his decision in consultation with any officer, the decision, in my opinion, is not open to challenge. As soon as the punishing authority adopts the opinion of any other officer, it becomes his opinion. Moreover, in the instant case, it cannot be said from the endorsement on noting by the Joint Director of Agriculture (Administration) that the Director of Agriculture did not apply his mind to the report of the enquiring officer before deciding what action was to be taken against the petitioner. It is absurd to suggest that principles of natural justice has been violated, even if it be assumed that the Director merely adopted the opinion of the Joint Director. Nor can it be said that any established rule or practice had been violated by allowing the Joint Director to consider the report of the enquiring officer in the first instance……."

24. This judgment of the Calcutta High Court holding that even if the punishing authority makes it decision, in consultation with any other Officer, the decision is not open to challenge, is no longer good law, in view of the judgment of the Supreme Court in **Nagaraj Shivarao Karjagi Vs. Syndicate Bank Head Office, Manipal**: wherein it was held thus:

"The corresponding new bank referred to in Section 8 has been defined under Section

2(*f*) of the Act to mean a banking company specified in column 1 of the First Schedule of the Act and includes the Syndicate Bank. Section 8 empowers the government to issue directions in regard to matters of policy but there cannot be any uniform policy with regard to different disciplinary matters and much less there could be any policy in awarding punishment to the delinquent officers in different cases. The punishment to be imposed whether minor or major depends upon the nature of every case and the gravity of the misconduct proved. The authorities have to exercise their judicial discretion having regard to the facts and circumstances of each case. They cannot act under the dictation of the Central Vigilance Commission or of the Central Government. No third party like the Central Vigilance Commission or the Central Government could dictate the disciplinary authority or the appellate authority as to how they should exercise their power and what punishment they should impose on the delinquent officer. (See : De Smith's *Judicial Review of Administrative Action*, 4th edn., p. 309). The impugned directive of the Ministry of Finance, is therefore, wholly without jurisdiction, and plainly contrary to the statutory Regulations governing disciplinary matters."

25. In **P.K. Khanna**[5], the apex Court held thus:

"…… The respondent's reliance on the decision in M.D., ECIL Vs. B. Karunakar: (1993) 4 SCC 727 is misplaced. That decision relates to the right of a delinquent officer to a copy of the enquiry officer's report. In the course of the judgment, the Court had no doubt said that the report of the enquiry officer is required to be furnished to the employee to make proper representation to the disciplinary authority before such authority arrives at the punishment, if any, to be awarded to him. By using the phrase "its own finding" what is meant is an independent decision of the disciplinary authority. It does not require the disciplinary authority to record separate reasons from those given by the enquiry officer. The concurrence of the disciplinary authority with the reasoning and conclusion of the enquiry officer means that the disciplinary authority has adopted the conclusion and the basis of the conclusion as its own. It is not necessary for the disciplinary to restate the reasoning.

As far as the second question is concerned, neither the decision in Karunakar nor Rule 33 quoted earlier postulate that the delinquent employee should be given an opportunity to show cause after the finding of guilt as to the quantum of punishment. The Rules envisage the passing of an order by the disciplinary authority not only finding the delinquent guilty, but also imposing punishment after the delinquent has been given a copy of the enquiry report and had an opportunity of challenging the same……."

26. Where the disciplinary authority concurs with the reasons and conclusions of the enquiry officer, he is deemed to have adopted the conclusions as his own and it is not necessary for him to restate the reasons and, in the absence of any specific requirement under the rules, a show cause notice on the quantum of punishment is unnecessary. The judgment of the apex Court in **P.K. Khanna**[5] has no application to the facts of the present case, since the contention raised in the present writ petition is not that the disciplinary authority has failed to assign independent reasons

or that the petitioner has been denied an opportunity to show cause against the proposed punishment. The contention, on the other hand, is that the railway board under Rule 10(2) has not intimated its tentative reasons for disagreement, with the findings of the enquiry officer, to the petitioner nor was he given an opportunity to submit his objections thereto.

27. In **Ashok Kumar**[4] the Supreme Court held thus:

"At the outset, it needs to be mentioned that the High Court in such cases of departmental enquiries and the findings recorded therein does not exercise the powers of appellate court/authority. The jurisdiction of the High Court in such cases is very limited for instance where it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity; findings are based on no evidence, and/or the punishment is totally disproportionate to the proved misconduct of an employee. There is a catena of judgments of this Court which had settled the law on this topic and it is not necessary to refer to all these decisions. Suffice it to refer to a few decisions of this Court on this topic viz. *State of A.P.* v. *S. Sree Rama Rao:* AIR 1963 SC 1723, *State of A.P.* v. *Chitra Venkata Rao*: (19975)2 SCC 557, *Corpn. of the City of Nagpur* v. *Ramchandra:* (1981)2 SCC 714 and *Nelson Motis* v. *Union of India:* AIR 1992 SC 1981.

The Enquiry Officer on appraisal of the materials before him held that the respondent was actively involved and the brain behind procuring false medical certificates and medical bills not only for himself but for other employees and on the basis of which the reimbursement claims were made by the respondent and other employees. The Corporation sanctioned these reimbursement claims of the various employees which had resulted in monetary loss to the Corporation. Before the Enquiry Officer except the respondent other employees of the Corporation admitted the charges and consequently a minor penalty was awarded to them. The respondent contested the charges levelled against him and denied that he was instrumental in cheating or committing forgery of the medical bills. On consideration of the report and findings of the Enquiry Officer, the Disciplinary Authority took a lenient view in respect of other employees. Having regard to the involvement of the respondent in the entire episode, the Disciplinary Au awarded him the penalty of dismissal from service. The order of dismissal passed by the Disciplinary Authority against the respondent was also affirmed by the appellate authority. Curiously enough, the High Court in its impugned judgment compared the case of the respondent with the other employees who have been awarded a lesser penalty and opined that there is a discrimination resorted to by the Disciplinary Authority in the matter of awarding the punishment. It is this action of the Disciplinary Authority in awarding the penalty being discriminatory and violative of Article 14 of the Constitution. In support of this reasoning, the High Court placed reliance on the decision of this Court in *Sengara Singh* v. *State of Punjab:* (1983)4 SCC 225 and the passage therefrom was reproduced in the impugned judgment which is distinguishable on facts. We have gone through the impugned judgment of the High Court dated 27-5-1993 and are of the view that the High Court was wrong in interfering with the punishment awarded by the Disciplinary Authority. The High Court has totally overlooked the findings of the Enquiry Officer and affirmed by the Disciplinary Authority that

the respondent was instrumental in obtaining forged medical bills not only for himself but also for other employees and he was the main actor behind cheating the Corporation. It is because of this finding, the Disciplinary Authority, in our opinion, rightly considered the award of penalty/punishment to the respondent differently than the other employees who although got the benefit of reimbursement on the forged bills but they accepted their guilt before the Enquiry Officer. Having regard to the facts and circumstances of this case, we are of the opinion that the High Court had committed serious jurisdictional error while interfering with the quantum of punishment. There is neither any discrimination resorted to by the Disciplinary Authority nor the punishment awarded to the respondent was disproportionate to his misconduct. The impugned judgment and order of the High Court, therefore, are unsustainable……..”

28. In **Ashok Kumar**[4], the Supreme Court held that the High Court should not normally interfere with the quantum of punishment, that its jurisdiction was limited and its interference would be justified only if it is found that the domestic enquiry is vitiated because of non-observance of principles of natural justice, denial of reasonable opportunity, if the findings are based on no evidence and/or the punishment is totally disproportionate to the proved misconduct of an employee. This judgment also has no application to the facts of the present case.

29. In **H.C. Goel**[2] the Supreme Court held thus:

“ The first question which calls for our decision is whether it was competent to the appellant to take a different view on the evidence adduced against the respondent and proceed on the basis that the conclusions of fact recorded by the enquiry officer were unsound and erroneous. If it is held that the appellant was precluded from differing from the conclusions of the enquiry officer, then, of course, the subsequent steps taken by the appellant would be inconsistent with Article 311 of the Constitution. On the other hand, if the competence of the appellant to differ from the conclusions of the enquiry officer cannot be seriously questioned, then the argument that the appellant contravened Article 311 when it issued the second notice against the respondent cannot succeed.

After the report is received by the Government, the Government is entitled to consider the report and the evidence led against the delinquent public servant. The Government may agree with the report or may differ, either wholly or partially, from the conclusions recorded in the report. If the report makes findings in favour of the public servant, and the Government agrees with the said findings, nothing more remains to be done, and the public servant who may have been suspended is entitled to reinstatement and consequential reliefs. If the report makes findings in favour of the public servant and the Government disagree with the said findings and holds that the charges framed against the public servant are prima facie proved, the Government should decide provisionally what punishment should be imposed on the public servant and proceed to issue a second notice against him in that behalf. If the enquiry officer makes findings, some of which are in favour of the public servant and some against him the Government is entitled to consider the whole matter and if it holds that some or all the charges

framed against the public servant are, in is opinion, prima facie established against him, the also the Government has to decide provisionally what punishment should be imposed on the public servant and give him notice accordingly, It would thus be seen that the object of the second notice is to enable the public servant to satisfy the Government on both the counts, one that he is innocent of the charges framed against him and the other that even if the charges are held proved against him, the punishment proposed to be inflicted upon him is unduly severe. This position under Article 311 of the Constitution is substantially similar to the position which governed the public servants under Section 240 of the Government of India Act. 1935. The scope and effect of the provisions of Section 240 of the Government of India Act 1935, as well as the scope and effect of Article 311 of the Constitution have been considered by judicial decisions on several occasions and it is unnecessary to deal with this point in detail, vide *the Secretary of State for India* v. *I.M. Lal:* AIR 1945 FC 47, *High Commissioner for India and High Commissioner for Pakistan And. I.M. Lal:* AIR 1948 PC 121 and *Khem Chand* v. *Union of India:* AIR 1958 SC 300.

Sometimes, several charges are framed and findings are recorded by the enquiry officer in respect of them. In such cases, Government may accept some findings and may reject others, and it has naturally to proceed to take the next step in the light of its own conclusions. Such a case arose before this Court in *State of Assam* v. *Bimil Kumar Pandit* : AIR 1963 SC 1612 Dealing with the requirements which the second notice must satisfy in such a case, this Court has held that the said notice must indicate to the public servant clearly the grounds on which the Government provisionally intends to act in imposing the proposed punishment specified in the notice.

Now, in this state of the evidence, how can it be said that the respondent even attempted to offer a bribe to Mr Rajagopalan? Mr Rajagopalan makes a definite statement that the respondent did not offer him a bribe. He merely refers to the fact that the respondent took out a paper from his wallet and the said paper appeared to him like a hundred rupee note double folded. Undoubtedly, Mr Rajagopalan suspected the respondent's conduct, and so, made a report immediately. But the suspicion entertained by Mr Rajagopalan cannot, in law, be treated as evidence against the respondent even though there is no doubt that Mr Rajagopalan is a straight-forward and an honest officer. Though we fully appreciate the anxiety of the appellant to root out corruption from public service, we cannot ignore the fact that in carrying out the said purpose, mere suspicion should not be allowed to take the place of proof even in domestic enquiries. It may be that the technical rules which govern criminal trials in courts may not necessarily apply to disciplinary proceedings, but nevertheless, the principle that in punishing the guilty scrupulous care must be taken to see that the innocent are not punished, applies as much to regular criminal trials as to disciplinary enquires held under the statutory rules. We have very carefully considered the evidence led in the present enquiry and borne in mind the plea made by the learned Attorney-General, but we are unable to hold that on the record, there is any evidence which can sustain the finding of the appellant that charge No. 3 has been proved against the respondent. It is in this connection and only incidentally that it may be relevant to add that the UPSC considered the matter twice and came to the firm decision that the main charge against the respondent had not been established."

30. It is well settled that while the disciplinary authority is entitled to disagree with the findings of the enquiry officer, he is required to intimate the delinquent employee of the reasons which weighed with him in differing with the conclusions of the

enquiry officer and give him an opportunity of submitting his objections thereto. Failure to do so would be in violation of principles of natural justice, which would result in the enquiry proceedings and the order of punishment imposed being vitiated. The contention of Sri R.S.Murthy, learned Standing Counsel for the respondents, based on the judgment of the Supreme Court in **Managing Director ECIL Vs. Karunakar** and **State Bank of Patiala Vs. S.K. Sharma** that no prejudice was caused to the petitioner, cannot also be accepted. As has been held by the Apex Court in **S.K. Sharma[9],** the prejudice doctrine has no application in a case where no opportunity or no notice was given to the delinquent employee. In the present case the petitioner was not put on notice regarding the Railway Board's tentative disagreement with the findings of the enquiry officer and was denied the opportunity of submitting his objections thereto. Since it is a case of no notice and no opportunity, and falls within the categories excluded in **S.K. Sharma[9]**, the prejudice doctrine has no application.

31. To sum up, the General Manager, after recording his tentative reasons of disagreement with the findings of the enquiry officer, and after hearing the petitioner, neither formed an opinion that the petitioner's case required imposition of a major penalty nor did he forward the records of the enquiry to the Railway Board. As the Railway Board, on its own accord, had summoned the records of the enquiry and had imposed the major penalty under Rule 6(v), the conditions prescribed in Rule 10(3) having not been complied with, the power of the Railway Board, to impose a major penalty on the petitioner is not referable to Rule 10(3). In the absence of any order being passed by the General Manager and communicated to the petitioner, the power of revision under Section 25(1) could not have been exercised. Prerequisite for exercise of the power of revision to impose a major penalty, even if such a power is assumed to be available in the present case, is that the petitioner should have been informed of the proposed penalty and given an opportunity to submit his representation thereto. These mandatory procedural requirements having not been complied with the power to pass the impugned order cannot be traced to Rule 25(1). Since any independent decision which the Railway Board could take, under Rule 10(2), is only after it had communicated its tentative reasons of disagreement with the findings of the enquiry officer calling upon the petitioner to submit his objections thereto and inasmuch as this requirement, both under the rules and in accordance with the rules of natural justice, has not been complied with, the action of the

Railway Board in imposing a major penalty on the petitioner is *ultra vires* the Railway Servants (Discipline and Appeal) Rules, 1968. As a result the impugned proceedings of the Railway Board dated 24.09.1992, as confirmed by the first respondent in his proceedings dated 17.03.2004 and the order of the Central Administrative Tribunal, in O.A.No. 72 of 2005 dated 15.02.2005 are hereby quashed. Needless to state that since the impugned orders are quashed on this ground, it is wholly unnecessary for this Court to examine the other contentions urged by Sri Nuty Rammohan Rao, learned Counsel for the petitioner.

32. The writ petition is allowed. However in the circumstances, without costs.

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J. CHELAMESWAR, J

Date: .03.2006

_____ RAMESH RANGANATHAN, J

Note: L.R.copy to be marked.

B/o

ASP/MRKR